

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BANK OF AMERICA, N.A.,

Plaintiff

vs.

WOODCREST HOMEOWNERS
ASSOCIATION; LAS VEGAS
DEVELOPMENT GROUP, LLC;
ABSOLUTE COLLECTION SERVICES,
LLC,

Defendants.

Case No.: 2:16-cv-0309-GMN-GWF

ORDER

Lenders and investors have been at odds over the legal effect of a homeowners' association's ("HOA") nonjudicial foreclosure of a superpriority lien on a lender's first trust deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *SFR*, 334 P.3d at 419.

However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme "facially violated mortgage lenders' constitutional due process rights" before it was amended in 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 832 F.3d 1154, 1160 (9th Cir. 2016). As a result, *Bourne Valley* is likely dispositive of this and the hundreds of other foreclosure cases pending in both state and federal court. To save the parties from the need to invest resources

1 briefing the effect of the *Bourne Valley* opinion before the finality of that opinion has been
2 determined, the Court **STAYS** all proceedings in this case pending exhaustion of all appeals of
3 *Bourne Valley*.

4 **I. LEGAL STANDARD**

5 “[T]he power to stay proceedings is incidental to the power inherent in every court to
6 control the disposition of the causes of action on its docket with economy of time and effort for
7 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A trial
8 court may, with propriety, find it is efficient for its own docket and the fairest course for the
9 parties to enter a stay of an action before it, pending resolution of independent proceedings
10 which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.
11 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible
12 damage which may result from the granting of a stay; (2) the hardship or inequity which a party
13 may suffer in being required to go forward; (3) the orderly course of justice measured in terms
14 of the simplifying or complicating of issues, proof, and questions of law which could be
15 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).
16 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside
17 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299
18 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.
19 *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.
20 2007).

21 **II. DISCUSSION**

22 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada
23 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either
24 extinguished the bank’s security interest under the *SFR* holding or had no legal effect because
25 the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that

1 the scheme was facially unconstitutional, *see Bourne Valley*, 832 F.3d at 1160, the *Bourne*
2 *Valley* opinion and any modification of that opinion have the potential to be dispositive of this
3 case. Under this circumstance, the *Landis* factors weigh strongly in favor of staying this action
4 pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to the
5 parties is minimal as the only potential harm is that the parties may wait longer for resolution of
6 this case if it is stayed. However, if this case is not stayed, a delay would also result from any
7 motions for reconsideration that may be necessitated if the current decision in the *Bourne*
8 *Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen the life of
9 this case. Further, in the absence of a stay, judicial resources may be unnecessarily expended to
10 resolve issues which may ultimately be decided by higher courts to which this Court is bound
11 to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly course of
12 justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying this action
13 pending final resolution of *Bourne Valley* would be efficient for the Court's own docket and the
14 fairest course for the parties. *See Leyva*, 593 F.2d at 863.

15 **III. CONCLUSION**

16 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending
17 exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, 832 F.3d 1154
18 (9th Cir. 2016). Once exhaustion occurs, any party may move to lift the stay. Until that time,
19 all proceedings in this action are stayed.

20 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice
21 with leave to refile within twenty-one days after the stay is lifted.

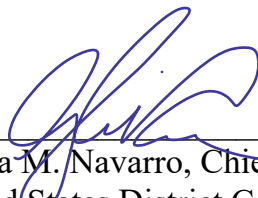
22 **IT IS FURTHER ORDERED** that current occupant Las Vegas Development Group,
23 LLC ("LVDG") shall care for, preserve, and maintain the Property.

24 **IT IS FURTHER ORDERED** that, beginning on April 28, 2017, the parties must file a
25 joint status report updating the Court on the status of this case every one-hundred and eighty

1 days. Along with the joint status report, LVDG shall submit a statement affirming that all
2 expenses necessary to maintain the property, including but not limited to, timely and full
3 payment of all homeowners association assessments, property taxes, and property insurance
4 premiums due and owing or past due at any time during the effective period of this Stay are
5 current and up to date.

6 **IT IS FURTHER ORDERED** that this Order does not prevent the parties from
7 continuing to engage in settlement conference negotiations with the assistance of the Magistrate
8 Judge.

9
10 **DATED** this 28 day of October, 2016.

11
12 
13 _____
14 Gloria M. Navarro, Chief Judge
15 United States District Court
16
17
18
19
20
21
22
23
24
25